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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/938,683	08/24/2001	David A. Burwell	JBP-566	2538

27777 7590 03/02/2004

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EXAMINER	
CHEVALIER, ALICIA ANN	
ART UNIT	**PAPER NUMBER**
1772	14

DATE MAILED: 03/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/938,683	Applicant(s) BURWELL ET AL.	
	Examiner Alicia Chevalier	Art Unit 1772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *29 September 2003*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-24* is/are pending in the application.

4a) Of the above claim(s) *24* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-23* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

RESPONSE TO AMENDMENT

1. Claims 1-24 are pending in the application, claim 24 is withdrawn from consideration due to Applicant's election, in paper #10, filed September 29, 2003 in response to the restriction in paper #8 mailed June 25, 2003.

2. Amendments to claims in paper #10 have been entered in the above-identified application.

Election/Restrictions

3. Applicant's election of Group I, claims 1-24 in Paper No. 10 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

WITHDRAWN REJECTIONS

4. The 35 U.S.C. §102 rejection of claims 1, 5-7 and 14-17 over Pelkie (US Patent No. 5,733,628), made of record in paper #8, page 4, paragraph #8 has been withdrawn due to Applicant's amendment in paper #10.

5. The 35 U.S.C. §103 rejection of claims 2-4 as over Pelkie in view of Daponte (US Patent No. 4,863,779), made of record in paper #8, pages 5-6, paragraph #10 has been withdrawn due to Applicant's amendment in paper #10.

6. The 35 U.S.C. §103 rejection of claims 8-13 as over Pelkie, made of record in paper #8, pages 6-7, paragraph #11 has been withdrawn due to Applicant's amendment in paper #10.

7. The 35 U.S.C. §103 rejection of claims 18 and 19 as over Pelkie in view of Han (US Patent No. 5,853,638), made of record in paper #8, pages 7-8, paragraph #12 has been withdrawn due to Applicant's amendment in paper #10.

8. The 35 U.S.C. §103 rejection of claims 20-22 as over Pelkie, made of record in paper #8, pages 8-9, paragraph #13 has been withdrawn due to Applicant's amendment in paper #10.

9. The 35 U.S.C. §103 rejection of claim 23 as over Pelkie in view of Han and Daponte, made of record in paper #8, pages 9-14, paragraph #14 has been withdrawn due to Applicant's amendment in paper #10.

NEW REJECTIONS

10. **The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.**

Examiner's Summary of the Invention

11. To the best of the examiner's knowledge, the elected base, or independent, claim of the application, is interpreted as follows:

1. A bilayer laminated personal care article comprising:

- an apertured film layer having
    - o a smooth side and
    - o a rough side
- an absorbent layer
    - o laminated to the smooth side of the apertured film layer

- the article is loaded with a skin care composition

Examiner's Comment

12. It is noted that Applicant has the limitation "an apertured film layer having a ***smooth*** side and a ***rough*** side" in claim 1. Applicant's have defined the "rough" side as which contains the raised protuberances and the "smooth" side as the side from which the raised protuberances originated (*Applicant's specification page 3, lines 10-24*). For purposes of examination an apertured film having one surface with raised protuberances, i.e. a non-flat surface, is considered to read on the limitation of having a ***smooth*** side and a ***rough*** side.

Claim Rejections - 35 USC § 103

13. Claims 1, 5-17 and 20-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pelkie (U.S. Patent No. 5,733,628) in view of Cashaw et al. (U.S. Patent No. 5,843,267).

Pelkie discloses a breathable elastic polymeric film laminate useful in disposable absorbent products such as diapers and hygiene products (*col. 1, lines 8-9*).

Regarding Applicant's claim 1, Pelkie discloses a laminate, Applicant's "bilayer laminated personal care article," comprising an apertured elastomeric web (*col. 2, lines 30-39*) and an absorbent fibrous carrier material (*col. 2, lines 40-46 and col. 4, lines 51-63*), Applicant's "absorbent layer. Figure 2 shows that the apertured film has a rough side which contains raised protuberances and a smooth side from which the raised protuberances originated.

The limitation "the article is useful for providing skin care benefits" is deemed to be a statement with regard to the intended use and is not further limiting in so far as the structure of

the product is concerned. In article claims, a claimed intended use must result in a ***structural difference*** between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. MPEP § 2111.02.

Pelkie fails to disclose that the article is loaded with a skin care composition. It is noted that Applicant considers skin care composition to be cleansers, skin care actives, moisturizers, and the like (*page 7, lines 19-20 of the specification*).

Cashaw discloses disposable absorbent feminine hygiene products (*col. 1, lines 11-12*).

Cashaw's disposable absorbent article comprises an absorbent layer which contains a means for maintaining skin moisture such as encapsulated moisturizers (*col. 4, lines 31-41*), Applicant's "article is loaded with a skin care composition."

Pelkie and Cashaw are analogous because they both discuss disposable absorbent hygiene products.

It would have been obvious to one of ordinary skill in the art at the time of the invention to add Cashaw's encapsulated moisturizers to Pelkie's absorbent fibrous carrier material in order to provide a means for maintaining skin moisture.

One of ordinary skill in the art would have been motivated to use encapsulated moisturizers in Pelkie's laminate because it would provide a means for maintaining skin moisture (*Cashaw col. 4, lines 31-41*).

It is desirable to have a means for maintain skin moisture because it will help prevent the user's skin from becoming dry and irritated, i.e. it would help prevent diaper rash.

Regarding Applicant's claims 5-7, Pelkie discloses the laminate has a compressibility from about 5 to about 50% (*col. 9, lines 55-57*), which reads on Applicant's claimed

compressibility ranges of "greater than about 14 percent," "greater than about 18 percent" and "greater than about 25 percent."

Regarding Applicant's claims 8-13, Pelkie discloses the optimum compression is about 5 to about 50% of the ambient loft of the carrier material. In certain embodiments, the resiliency of the fibers under compression, (i.e. the fact that the fibers tend to straight back up to their original shape and position they had prior to any compression at the impingement point) will force a portion of their fiber length to embed in the soft molten polymer directly beneath them. Too much compression will force too many fibers to deeply embed or distort and the desired cloth-like characteristics of the end product are lost. In addition, too much compression causes problems such as having the impingement roll bounce, which then causes proved an uneven lamination of the carrier material onto the film material. Alternatively, if too little compression is used, there is not enough force to cause sufficient embedding of the carrier materials such that the carrier material is not laminated adequately and will fall or peel of the end product. *See column 9, line 46 to column 10, line 5.*

Pelkie also discloses that the carrier material adheres to the elastomeric film without the use of adhesive (*col. 8, lines 24-26*).

Therefore, since Pelkie disclose that resiliency and bond strength are related to the compression of the article the exact resiliency and bond strength of the laminate is deemed to be a result effective variable with regard to the compression of the laminate. It would require routine experimentation to determine the optimum value of a result effective variable, such as resiliency and bond strength, in the absence of a showing of criticality in the claimed resiliency and bond strength. *In re Boesch*, 205 USPQ 215 (CCPA 1980), *In re Woodruff*, 16 USPQ2d

1934, 1936 (Fed. Cir. 1990). One of ordinary skill in the art would have been motivated by Pelkie disclose to optimize the resiliency and bond strength of Pelkie in order to in sure the article would have sufficient resiliency under compression and strong enough bond strength not to fall apart during use.

Regarding Applicant's claims 14-16, Pelkie discloses the fibrous material can be non-woven with a basis weight from about 5 to about 150 g/m^2 (*col. 5, lines 17-21 and col. 10, lines 43-48*), which reads on Applicant's claimed weight basis ranges of "about 10 g/m^2 to about 200 g/m^2," "about 15 g/m^2 to about 100 g/m^2" and "about 20 g/m^2 to about 50 g/m^2."

Regarding Applicant's claim 17, Pelkie discloses the apertured elastomeric web comprises materials such as polyethylene (*col. 5, lines 22-45*).

Regarding Applicant's claims 20-22, Pelkie discloses that in the process of making the laminate the impingement roll is spaced from at a predetermined distance from the screen form a gap there between. The preferred distance of gap between the roll and screen is determined by the thickness of elastomeric film and the carrier being laminated together. The carrier and film are brought into contact at this gap and bonded together. *See column 10, lines 6-32.*

Therefore, the exact thickness apertured film is deemed to be a result effective variable with regard to the gap between the impingement roll and the screen. It would have been obvious to one having ordinary skill in the art to have determined the optimum value of a cause effective variable such as combined thickness of the apertured film through routine experimentation in the absence of a showing of criticality in the claimed thickness. *In re Boesch*, 205 USPQ 215 (CCPA 1980), *In re Woodruff*, 16 USPQ2d 1934, 1936 (Fed. Cir. 1990). One of ordinary skill in

the art would have been motivated to optimize the thickness of the apertured film in order to insure a good contact between the film and the carrier for bonding.

14. Claims 2-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pelkie in view of Cashaw et al. as applied above, and further in view of Daponte (U.S. Patent No. 4,863,779).

Pelkie and Cashaw are relied upon as described above.

Pelkie and Cashaw fail to disclose the drapability of the laminate.

Daponte discloses a composite elastomeric material, which is suitable as bodyside cover for diapers, health care garments and materials, tissue, and a variety of industrial products (*col. 2, lines 63-66*).

The composite is a soft, cloth-like materials that is superior to prior art materials with respect to drape, strength, and stretch (*col. 1, lines 15-18 and col. 3, lines 42-48*). The composite comprises a first gatherable web, a fibrous elastic web, and a second gatherable web (*figure 2A*). The fibrous web is a nonwoven web with a basis weight ranging from about 15 grams per square meter to about 300 grams per square meter (*col. 14, lines 35-52*). The composite has a drape stiffness, Applicant's "drapability," of 1.87 to 4 centimeters (*column 27, line 68 to column 28, line 1*), which is 18.7 mm to 40 mm and reads on Applicant's claimed ranges of "about 25 mm to about 100mm," "about 25 mm to about 100mm" and "about 25 mm to about 40 mm." Drape Stiffness is the measure of the softness of the material, the lower the value the more drape or less stiff and thus the softer material feels to the hand (*column 27, line 60 to column 28, line 3*).

Pelkie, Cashaw and Daponte are analogous because they all discuss disposable absorbent hygiene products.

Therefore, the exact drape stiffness, Applicant's "drapability" of Pelkie and Cashaw's laminate is deemed to be a result effective variable with regard to the softness of the laminate. It would require routine experimentation to determine the optimum value of a result effective variable, such as drape stiffness, in the absence of a showing of criticality in the claimed ranges. *In re Boesch*, 205 USPQ 215 (CCPA 1980), *In re Woodruff*, 16 USPQ2d 1934, 1936 (Fed. Cir. 1990). One of ordinary skill in the art would have been motivated by Daponte to have a drape stiffness, Applicant's "drapability," of 18.7 mm to 40 mm in the combination of Pelkie and Cashaw in order to have a low drape value for the laminate. One would have been motivated to have a low drape value such as between 18.7 mm and 40 mm because the lower the value the more drape or less stiff and thus the softer material feels to the hand (*Daponte column 27, line 60 to column 28, line 3*). It is desirable to use soft materials in absorbent disposable hygiene products in order to avoid irritating the skin of the user.

15. Claims 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pelkie in view of Cashaw et al. as applied above, and further in view of Han (U.S. Patent No. 5,853,638).

Pelkie and Cashaw are relied upon as described above.

Pelkie and Cashaw fail to disclose the apertured film made of a blend of various molecular weight polyolefins and the number of apertures per square centimeters and aperture diameter.

Pelkie further discloses, it is also contemplated that various blends of resins used to formulate the film can be used to achieve the desired qualities of the end product (*col. 11, lines*

8-11), but does not specifically disclose the apertured film made of a blend of various molecular weight polyolefins.

Han discloses a porous film, which is soft to the touch and processes excellent strength and biaxial stretchability, and also possesses adequate permeability and is used for the manufacture of disposable diapers, water-proof clothing, packing materials, medical supplies, and in many other applications as well (*col. 1, lines 5-18*). The film is made from a mixture of three low and medium density polyethylene resins (*col. 2, lines 56-67*).

Pelkie, Cashaw and Han are analogous because they all discuss disposable absorbent hygiene products.

It would have been obvious to one of ordinary skill in the art at the time of the invention to use Han's film made of a blend of various molecular weight polyolefins as the apertured film of Pelkie and Cashaw in order to improve the strength of Pelkie and Cashaw's film. One of ordinary skill in the art would have been motivated to use a film made of a blend of various molecular weight polyolefins because such as film is soft to the touch and processes excellent strength and biaxial stretchability, and also possesses adequate permeability (*Han col. 1, lines 5-18*). It is desirable to have film, which is strong and stretchable so that the film will not break during use.

Regarding Applicant's claim 19, Pelkie discloses the film can be made with different patterns of apertures having different percentages of open areas hole sizes, hole geometries, materials and surface coatings and treatments (*col. 11, lines 6-8*). The apertures are add to the film to impart breathability to the laminate (*col. 2, lines 47-55*).

Therefore, the exact number of apertures per square centimeter and diameter of the apertures are deemed to be result effective variables with regard to the breathability of the laminate. It would require routine experimentation to determine the optimum value of a result effective variable, such as number of apertures per square centimeter and diameter of the apertures, in the absence of a showing of criticality in the claimed ranges. *In re Boesch*, 205 USPQ 215 (CCPA 1980), *In re Woodruff*, 16 USPQ2d 1934, 1936 (Fed. Cir. 1990). One of ordinary skill in the art would have been motivated to optimize the number of apertures per square centimeters and diameter of the apertures depending the desired breathability level desired in the laminate.

16. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pelkie in view of Cashaw et al. and Han as applied above, and further in view of Daponte.

Pelkie, Cashaw and Han are relied upon as described above.

Pelkie, Cashaw and Han fail to disclose the drapability of the laminate.

Daponte discloses a composite elastomeric material, which is suitable as bodyside cover for diapers, health care garments and materials, tissue, and a variety of industrial products (*col. 2, lines 63-66*).

The composite is a soft, cloth-like materials that is superior to prior art materials with respect to drape, strength, and stretch (*col. 1, lines 15-18 and col. 3, lines 42-48*). The composite comprises a first gatherable web, a fibrous elastic web, and a second gatherable web (*figure 2A*). The fibrous web is a nonwoven web with a basis weight ranging from about 15 grams per square meter to about 300 grams per square meter (*col. 14, lines 35-52*). The composite has a drape stiffness, Applicant's "drapability," of 1.87 to 4 centimeters (*column 27, line 68 to column 28,*

line 1), which is 18.7 mm to 40 mm and reads on Applicant's claimed range of "about 25 mm to about 40 mm." Drape Stiffness is the measure of the softness of the material, the lower the value the more drape or less stiff and thus the softer material feels to the hand (*column 27, line 60 to column 28, line 3*).

Pelkie, Cashaw, Han and Daponte are analogous because they all discuss disposable absorbent hygiene products.

Therefore, the exact drape stiffness, Applicant's "drapability" of Pelkie and Cashaw's laminate is deemed to be a result effective variable with regard to the softness of the laminate. It would require routine experimentation to determine the optimum value of a result effective variable, such as drape stiffness, in the absence of a showing of criticality in the claimed ranges. *In re Boesch*, 205 USPQ 215 (CCPA 1980), *In re Woodruff*, 16 USPQ2d 1934, 1936 (Fed. Cir. 1990). One of ordinary skill in the art would have been motivated by Daponte to have a drape stiffness, Applicant's "drapability," of 18.7 mm to 40 mm in the combination of Pelkie and Cashaw in order to have a low drape value for the laminate. One would have been motivated to have a low drape value such as between 18.7 mm and 40 mm because the lower the value the more drape or less stiff and thus the softer material feels to the hand (*Daponte column 27, line 60 to column 28, line 3*). It is desirable to use soft materials in absorbent disposable hygiene products in order to avoid irritating the skin of the user.

ANSWERS TO APPLICANT'S ARGUMENTS

17. Applicant's arguments in paper #10 regarding the 35 U.S.C. 102 and 103 rejections of record have been considered but are moot due to the new grounds of rejection.

Conclusion

18. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alicia Chevalier whose telephone number is (571) 272-1490. The examiner can normally be reached on Monday through Friday from 8:00 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon, can be reached on (571) 272-1498. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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2/18/04

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2/21/04